

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KIM MCMULLEN	:	CIVIL ACTION NO. 1:06-CV-0183
	:	
Petitioner	:	(Judge Conner)
	:	
v.	:	
	:	
FRANKLIN TENNIS	:	
	:	
Respondent	:	

ORDER

AND NOW, this 1st day of February, 2006, upon consideration of the petition for writ of habeas corpus, and it appearing that the petition may be construed and ruled upon under 28 U.S.C. § 2254, see id. (“[A] district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.”), but that construing and ruling upon the petition under 28 U.S.C. § 2254 may preclude petitioner from filing a second or successive petition for writ of habeas corpus, see id. § 2244(b) (providing that a “second or successive habeas corpus application” under § 2254 may be filed only in limited circumstances and with approval by a court of appeals); Mason v. Myers, 208 F.3d 414, 417-18 (3d Cir. 2000) (instructing district courts to provide notice to pro se petitioners of potential ramifications of filing petition under § 2254); but cf. Pliler v. Ford, 124 S. Ct. 2441, 2446 (2004) (disapproving of requirement that district courts give habeas petitioners warnings related to exhaustion and statute of limitations), it is hereby ORDERED that:

1. Petitioner is GRANTED leave to elect, within forty-five days of the date of this order, to withdraw the petition or to have the petition construed and ruled upon under 28 U.S.C. § 2254.
2. Petitioner shall file, within forty-five days of the date of this order, the attached election form, indicating an election to withdraw the petition or to have the petition construed and ruled upon under 28 U.S.C. § 2254.
3. Failure to comply with this order will result in the petition being construed and ruled upon under 28 U.S.C. § 2254.

/s/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

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NOTICE OF ELECTION

You have filed a petition for writ of habeas corpus seeking relief from a judgment of a state court. You must elect whether you would prefer that the court construe and rule upon your petition under 28 U.S.C. § 2254 or whether you would prefer to withdraw your petition.

If you elect to have your petition construed and ruled upon under 28 U.S.C. § 2254, you may lose your right to file second or successive petitions for writ of habeas corpus, even if those petitions raise claims not presented in the petition currently before the court. Federal law grants individuals the right to file *one* petition under 28 U.S.C. § 2254 to challenge the judgment of a state court. Individuals are not allowed to file second or successive petitions under 28 U.S.C. § 2254 without approval from the appropriate court of appeals. This approval is available only in limited circumstances, outlined in 28 U.S.C. § 2244(b). As such, if the court construes and rules upon your petition under 28 U.S.C. § 2254, you may lose your right to file second or successive petitions raising other grounds for relief.

The court will give you two options to proceed. You may elect (1) to have your petition construed and ruled upon under 28 U.S.C. § 2254 or (2) to withdraw your petition with the intent of filing an all-inclusive petition under 28 U.S.C. § 2254, raising all grounds for relief, within 120 days of the date of this order. You should consult 28 U.S.C. §§ 2244 and 2254 for more information on the availability and nature of relief under these provisions.

You will be provided forty-five (45) days in which to return the attached election form to the court. If this form is not completed and filed within this period, the court will construe and rule upon your petition under 28 U.S.C. § 2254. Your election on this form, or your failure to make an election, will be binding on you.

After you have reviewed this notice and the appropriate provisions, print your name in the space provided and choose one of the options listed in the form. Then sign and date the form and file the completed form with the court within forty-five (45) days.

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ELECTION FORM

I, _____, petitioner in the above-captioned case, have
read the notice of election in its entirety and make the following election:

- ___ I elect to have my petition construed and ruled upon under 28 U.S.C.
§ 2254.

- ___ I elect to withdraw my petition with the intent of filing an all-inclusive
motion under 28 U.S.C. § 2254, raising all grounds for relief, within 120
days of the date of this order.

I declare under penalty of perjury that the foregoing is true and correct.

(Signature)

(Date)